THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 1372 of 1996

Dated 02-08-2005.

Between:

1 Kalimi Subbaramaiah (died) per LR S/o Seshaiah
R/o Gudipallipadu (V), Nellore Rural (M),
Nellore Dist.
2 Kadimi Ramanamma W/o. K. Subba Ramaiah
Petitioner No.2 is brought on record as LR of deceased
(petitioner as per court order dt. 30-12-2004 in WPMP 26922 of

2004)

..... PETITIONERS

AND

1 Govt. of A.P. rep. by Secretary
Revenue Dept., Secretariat,
Hyderabad
2 The District Collector & District Magistrate,
Nellore Dist.
3 The Revenue Divisional Officer,
Nellore
4 Sri Chennakeswaraswamy Temple, rep. by Executive Officer
Gudipallipadu (V), Nellore Rural Mandal,
Nellore Dist.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.1372 of 1996

O R D E R:

Subsequent to the filing of this writ petition the sole petitioner died and so his legal representative was brought on record.

The case of the writ petitioner is that he is a tenant in respect of Ac.1.57 cents in Survey No.292/1 of Gudipallipadu village, Nellore, belonging to the 4th respondent temple for several years and in order to evict him therefrom, at the behest of political parties, respondents 1 and 3 proposed to acquire the said land for providing house sites to harijans, though lands which are suitable to be used as house sites are available near to the land in his possession as a tenant.

The case of respondents 1 to 3 is that petitioner is not a tenant in respect of the above land which is required for the purpose of providing house sites to the weaker sections of the society and since that land was already taken over possession of petitioner is not entitle to any relief.

The contention of the learned counsel for the petitioner is that since this Court while admitting the writ petition on 30-1-1996 granted stay of dispossession up to April, 1996 the contention of respondents 1 to 3 that they have taken possession of the land on 16-2-1996 cannot be true and contended that since 4th respondent did not dispute the tenancy of the writ petitioner and since in fact writ petitioner filed A.T.C.No.2 of 1984 for an injunction against forcible dispossession, when 4th respondent intended to take possession high handedly, and obtained an interim order in I.A.No.39 of 1984 and since the receipts produced by the petitioner clinchingly establish the factum of his tenancy and since respondents 1 to 3 did not follow the guidelines issued in G.O.No.456 dated 29-9-1995, for acquiring the land belonging to the temple, and since there are no valid grounds for dispensing with the

enquiry under Section 5 A of the Land Acquisition Act, proceedings impugned are liable to be set aside by relying on **Union Government of India and others v. Mukesh Hans etc.**

The contention of the learned Government Pleader is that since petitioner is not in actual physical possession of the land, which is required for providing house sites to weaker sections of society there are no grounds to quash the proceedings impugned.

The contention of respondents 1 to 3 that petitioner was dispossessed on 22-2-1996 is not and cannot be true, since stay granted by this Court, was in operation by that day.

The procedure contemplates by G.O.Ms.No.456, dated 29-9-1995 admittedly was not followed in this case though the land proposed to be acquired is a land belongs to temple-4th respondent whose land is sought to be acquired did not choose to deny the allegation of the writ petitioner that he is the tenant in respect of the land proposed to be acquired. So the contention of respondents 1 to 3 that petitioner is not a tenant of the land proposed to be acquired cannot be accepted, more so because the documents produced by the petitioner show that he paid rent to the 4th respondent.

The purpose of acquisition is for providing house sites to weaker sections of the society. The contention of the writ petitioner is that the land in his possession is not suitable for house sites and that some other land, suitable for house sites is available nearby. As held in Mukesh Hans Case (1 Supra) enquiry under Section 5 A of the Land Acquisition Act is a valuable right and such enquiry cannot be dispensing with as a matter of course. Since no material is placed before this Court to show that there was proper application of mind for dispensation of the enquiry under Section 5 A of the Land Acquisition Act and since the procedure contemplated by G.O.Ms.No.456 dated 29-9-1995 also is not followed prior to the initiation of the proceedings for acquisition of the land belonging to the 4th respondent temple, the proceedings impugned are liable to be and hence are quashed.

Accordingly, the writ petition is allowed and the rule nisi is made absolute. No costs.

02nd August, 2005.

mrb